

**Merton Code of Conduct in Respect of the Provisions of
The Anti-Social Behaviour Act 2003 & The Education and Inspections
Act 2006**

Revised 2023

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This Draft Code of Conduct is to be agreed between:

- Merton Borough Council (The Local Education Authority)
- Governing Bodies and Headteachers of Merton Schools
- The Merton Division of the Metropolitan Police Service

In accordance with The Education (Penalty Notices) (England) Regulations 2007, regulations 14 and 15.

Codes of conduct

Any person issuing a penalty notice shall do so in accordance with a code of conduct drawn up by the local education Authority and which sets out measures to ensure consistency in the issuing of penalty notices, including —

- a) Means of avoiding the issue of duplicate notices.
- b) Measures to ensure that a notice is not issued when proceedings for an offence of non-attendance at school under s.444 of the Education Act 1996 or section 103(3) of the Education and Inspections Act 2006 are contemplated or have been commenced by the local education authority.
- c) The occasions when it will be appropriate to issue a penalty notice for an offence.
- d) A maximum number of penalty notices that may be issued to one parent in any twelve month period.
- e) Arrangements for co-ordination between the local education authority, neighbouring local education authorities where appropriate, the police and authorised officers.

In preparing the code of conduct the local education authority shall consult governing bodies, head teachers and the chief officer of police for a police area which includes all or part of the area of the local education authority and shall have regard to any guidance issued by the Secretary of State.

Merton Provisions

a) Means of avoiding the issue of duplicate notices.

- i. The Education Welfare Service will provide a database for storing pupil data and arrange for a "Mail Merge" function to automatically produce notices.
- ii. Data entry will be undertaken by the Education Welfare Service in respect of Data Entry Forms received from its Code of Conduct partners, requiring a notice to be issued.
- iii. Penalty notices will only be issued following specific confirmation from the Education Welfare Service that no other notice has been requested or issued in respect of the event in question.
- iv. Measures to ensure that a notice is not issued when proceedings for an offence under s.444 of the Education Act 1996 or section 103(3) of the Education and Inspections Act 2006 are contemplated or have been commenced by the local education Authority;
- i. The database in section a) above will also contain details of cases where legal intervention is a likely outcome.

- ii. The Education Welfare Service will check the database against Data Entry Forms received and advise the sender of any possible legal intervention in progress.

b) The occasions when it will be appropriate to issue a penalty notice for an offence involving unauthorised absence (Truancy).

- i. The key consideration in deciding whether to issue a penalty notice will be whether it can be effective in helping to get the pupil who is truanting back into school.
- ii. The school have previously referred the pupil to the Education Welfare Service and casework is in progress (for exceptions see para: iv below)
- iii. A penalty notice is a suitable intervention in circumstances where the parent is judged capable of securing their child's regular attendance but is not willing to take responsibility for doing so, for example where the parent has failed to engage with any voluntary or supportive measures proposed. It will be particularly useful as a sanction at an early stage before attendance problems become entrenched and where the Authority considers that a prosecution would be too heavy-handed. A penalty notice may be issued to each parent in respect of each of their children who meet the criteria set out in this section.
- iv. The normal response to a first offence should be a warning rather than a penalty. However, the Authorised Officer [see ei below) has the discretion to issue a penalty notice for a first offence in exceptional circumstances. This could be where the unauthorised absence was for an extended period and condoned by the parent, for example where the parent has chosen to take their child on holiday during term time without authorisation or for parentally condoned absence identified in the course of truancy initiatives. The trigger for a Penalty Notice with regard to holiday/leave of absence to be 5 days or more unauthorised absence (concurrent or separate absences within a 4 month period) Schools will need to be able to evidence that the parents were informed, in advance, that a particular holiday absence would not be authorised and that a penalty notice might be the result.
- v. Where a child's attendance falls below 85% in a given period (at least 50 x ½ day sessions) of which the majority of absences are without reasonable justification.

If/when the Government goes ahead with the process of further reducing the percentage figures, with the passage of time, the triggers for Penalty Notices maybe adapted in line with these changes, once partners have been formally notified, if this is deemed appropriate by the Education Welfare Service

- vi. Where a child who has been permanently excluded or excluded for a fixed term and alternative provision has been put in place for that pupil after the initial 5 days and that attendance falls below 90%.

- vii. Where parenting Contracts or Orders have been unsuccessful or not complied with.
 - viii. Where parents are unwilling to sign a contract.
 - ix. The Education Welfare Service will determine whether a notice should be issued following receipt of a completed data entry form. The form will contain a section where the circumstances of the offence and the reasons for requesting a notice can be set out.
 - x. There is no right of appeal [but see f) below]
- c) The occasion when it will be appropriate to issue a penalty notice for an offence where an excluded pupil is found in a public place, without reasonable justification during school hours, on the specified days of exclusion.**
- i The key consideration is whether it will be an appropriate sanction for the failure.
 - ii The parent/carer must have been notified in writing that a pupil for whom they are responsible has been excluded and in that notice informed that the pupil must not be in a public place during school hours, on the specified days of exclusion. (School hours mean a school session or a break between sessions on the same school day).
 - iii The Local Education Welfare Service and Exclusions Officer have been notified immediately a pupil is excluded either Fixed Term or Permanent.
 - iv In deciding the course of action to be taken consideration should be given to the number of occasions on which an excluded child is apprehended, and the circumstances, such as the parent's actions or inactions, which have caused him to be in a public place when he should not be.
 - v There is no reasonable justification for the pupil being in a public place. A public place means any highway or any place to which the public or a section of the public have access. It will be for the parent to prove the facts of any circumstances put forward by them as a reasonable justification.
 - vi In determining whether reasonable justification is applicable a member of the Education Welfare Service will endeavour to meet with the parent/carer. Each case will be considered on its merits and all relevant evidence provided taken into account. In some circumstances it may be necessary for a child to be in a public place during school hours on a day when they are excluded. This could for example include attendance at a pre-arranged medical appointment. Activities, which could readily be carried out at the weekend or after school hours, such as the pupil shopping for clothes or food, are unlikely to be a reasonable justification for an excluded pupil being in a public place during school hours.
 - vii Except in exceptional circumstances, a first offence should be dealt with by way of a written caution.

d) Child Looked After By LA

The local authority will be expected to follow the spirit of these provisions by ensuring that looked after children for whom they are responsible are not present in a public place, during the first five days, when excluded though as a corporate parent the local authority cannot be prosecuted. If the child is placed with foster parents then they are responsible for ensuring the above provisions are complied with. (The definition of “parent” is set out in Section 576 of the Education Act 1996.)

Schools and Merton local Authority should give consideration to providing full time education prior to the sixth day of exclusion.

e) A maximum number of penalty notices that may be issued to one parent in any twelve month period

- The Authority has to have regard to the ability to pay and other factors. Multiple penalty notices may be issued by agreement with its partners but generally no more than two penalty notices per child will be issued during a 12 month period.

f) Arrangements for co-ordination between Merton Local Education Authority, neighbouring local education authorities where appropriate and the police.

- i. The Authorised Officer for the purpose of section 444(1) and 444(1A) of the Education Act 1996 shall be the Education Welfare Service Courts Officer or in their absence, the Manager of the Education Welfare Service.
- ii. Merton Education Welfare Service will draft a protocol for cross-borough co-ordination, consult our neighbouring local education authorities and share the information with our partners.
- iii. A steering group will be constituted to monitor the operation of the regulations and to modify and adapt the code of conduct in the light of experience. Representatives of EWS, head teachers, governors, police, magistrate’s court, will be invited to participate.

g) Withdrawal Of Penalty Notice

The Authority may withdraw a penalty notice in any case, in which the Authority determines that —

- i. It ought not to have been issued,
- or
- ii. It ought not to have been issued to the person named as the recipient, or
- iii. The penalty has not been paid in full before the expiry of the period for payment but it is not appropriate to prosecute the recipient for the offence in connection with which the notice was issued.

Where a penalty notice has been withdrawn in accordance with the above:

- iv. Notice of the withdrawal shall be given to the recipient :
- v. Except where the notice is withdrawn under ground (iii) above, any amount paid by way of penalty in pursuance of that notice shall be repaid to the person who paid it; and
- vi. No proceedings shall be continued or instituted against the recipient for the offence in connection with which the withdrawn notice was issued or for an offence under S.444(1A) of the Education Act 1996 or section 103(3) of the Education and Inspections Act 2006 arising out of the same circumstances.

Parenting Contracts for Truancy, Behaviour or Exclusion

A parenting contract is a formal agreement between a parent, school/academy and other relevant partners and relates to the child's truancy or behaviour [See b) below]

Neither parents nor local education authorities or partners are compelled to enter into a parenting contract. It is a voluntary arrangement. Courts will however have regard to whether or not parenting contracts have been tried before granting an application for a Parenting Order.

A parenting contract is a written document containing:

- a) A statement by the parents or guardians that they agree to comply for a specified period with whatever requirements are specified in the contract; and
- b) A statement by the school/academy agreeing to provide support to the parents or guardians for the purpose of complying with the contract. The statement should be made by whoever is in a position to commit any additional resources necessary.

Circumstances In Which A Parenting Contract Might Be Pursued.

Working Together to Improve Attendance 2022 states:

A parenting contract is a formal written agreement between a parent and either the school (with the exception of independent schools and non-maintained special schools) or local authority to address irregular attendance at school or alternative provision. A contract is not legally binding but allows a more formal route to secure engagement with support where a voluntary early help plan has not worked or is not deemed appropriate. A parenting contract is not a punitive tool it is intended to provide support and offer an alternative to prosecution. Parents cannot be compelled to enter a contract, and they cannot be agreed in a parent's absence.

A parenting contract may be used in cases of exclusion from school when a pupil has been excluded from school on disciplinary grounds either permanently or for a fixed period. A parenting contract can also be used if the pupil has engaged in behaviour which has caused or is likely to cause significant disruption to the education of other pupils or significant detriment to the welfare of the pupil or others or the health or safety of any staff, or where there is a pattern of behaviour which (if continued) will give rise to a risk of future exclusion.

The contract will be between the parent and the provider of any additional services arising out of the contract. The Local Education Authority can arrange a parenting contract with parents of pupils registered at schools in its area or of pupils living in the area who have been permanently excluded. Schools can arrange parenting contracts with parents of pupils registered at that school.

At What Point Should the Parenting Contract Be Arranged?

In cases of truancy, schools should seek to engage parents with a Parenting Contract before enforcement action is considered.

The Parenting Contract should be for no less than 12 weeks with regular reviews. However, if there is no engagement/improvement in attendance after 4 weeks the Parenting Contract can cease and enforcement action can be commenced.

In cases of exclusion from school, a school could arrange a parenting contract on or after the date on which the exclusions review and appeal process has been completed.

In the case of permanent exclusions this would be:

- The date by which it is known that the parent does not wish to lodge an appeal against the head teacher's decision to exclude, which has subsequently been upheld by the Governing Body Discipline Committee or other such committee that may have been given delegated powers. This would be the date set out in the letter sent to the parent by the Discipline Committee (covered in existing guidance), informing the parent of their decision to uphold the permanent exclusion, as the date by which time the parent must have notified the Authority that they wish to lodge an appeal; or
- The date upon which the Independent Appeal Panel endorses the decision to exclude.

In the case of fixed-term exclusions the date on which the review process is complete would be:

- The date upon which the Governing Body Discipline Committee or other such committee that may have been given delegated powers endorses the Head teacher's decision to exclude; or
- If the Discipline Committee does not consider the exclusion, the date on which the exclusion began.

For a Pupil Referral Unit, the review process is complete when the Authority endorses the decision of the teacher in charge to exclude; or if the Authority does not consider it, the date on which the exclusion began.

In the case of disruptive or detrimental behaviour or behaviour which gives rise to a risk of exclusion, a parenting contract should be considered as soon as possible after the misbehaviour has occurred.

No Parenting Contract will be entered into without clearly documented agreement as to who will provide the support element.

Parenting Orders only in Cases of Exclusion from School or Serious Misbehaviour.

Parenting Orders are available upon application to the courts only in cases of exclusion from school or cases of behaviour, which would warrant exclusion from school on disciplinary grounds. Their purpose is to help engage parents who have been unwilling to engage on a voluntary basis and will support them in addressing their child's poor behaviour in school.

The parenting order consists of two elements:

- A requirement on the parent to attend counselling or guidance sessions where they will receive help and support to enable them to improve their child's behaviour. This is the core of the parenting order and lasts for 3 months;
- A requirement on the parent to comply with such requirements as are specified in the order. This element can last up to 12 months.

Parenting Orders available in cases of exclusion from school or behaviour at school are civil parenting orders. Civil parenting orders may be applied for directly to the court and are not imposed by the court as a result of a prosecution for a criminal offence.

The Authority or the governing body can apply for a parenting order. Before applying for an order the Authority or the governors must consult each other. The Authority can only apply for an order in relation to a pupil at a school within the Authority's area, or if the pupil has been permanently excluded, the pupil lives in Merton. Application can be made in respect of a pupil attending a school in another LEA or a pupil who has been permanently excluded and lives outside Merton by agreement with the relevant Authority. The governing body can apply for a parenting order in respect of a pupil at their school or a pupil who has been excluded from their school. However they can only apply for a parenting order in respect of a pupil permanently excluded from their school who has been admitted to another school by agreement with that school.

A parenting order can be imposed on one or both parents and their consent is not required.

No applications will be made on behalf of schools unless evidence is provided that the pupil has been excluded and that the exclusion was made in response to serious misbehaviour at school. (See Appendix 1)

Responsible Officer

A parenting order must specify a responsible officer, who could be an officer of the Authority, a head teacher or person nominated by the head teacher. A head teacher may only nominate a member of school staff to be the responsible officer of a parenting order.

Merton Council will assign one of its officers to be the responsible officer when it applies for a parenting order unless:

- The Head Teacher accepts responsibility for acting as a responsible officer (either themselves or through a member of the school staff) where they have consulted and received the backing of the school's governing body. Authorities may only designate a head teacher or a person nominated by the head teacher to be the responsible officer if they are satisfied that the school's governing body is supportive of this arrangement and has agreed to meet the costs of the counselling or guidance sessions. (See "Costs" section below) or
- The order for exclusion should also cover criminal conduct and anti-social behaviour under Section 26 of the Anti-social Behaviour Act 2003. In the latter case, the youth offending team would usually be the lead agency, depending on the circumstances of the case and local arrangements.

Role Of The Responsible Officer

- (See Appendix 2)

Circumstances in which a parenting order might be pursued

The Authority may apply to a magistrate's court for a freestanding parenting order when:

- A pupil has been excluded from school for a second fixed-term within a period of 12 months; or
- After a pupil has been permanently excluded from school.
- For behaviour cases.

Assessing when a parenting order is appropriate

A parenting order is only appropriate where the exclusion has been made in response to serious misbehaviour or there is serious misbehaviour which would warrant exclusion.

Serious misbehaviour would include serious assault (including sexual assault), significant damage to school property, major theft from an individual or from the school, supplying an illegal drug and carrying an offensive weapon. Bullying could also constitute serious misbehaviour.

In deciding whether a parenting order might be appropriate the Authority must make a judgement about whether parenting is a significant factor in the child or young person's misbehaviour, whether a parenting programme could remedy this and if so, what form it should take.

An application for a parenting order can be made in respect of one or more persons who come within the definition of parent.

Timing of any application for a Parenting Order

Any application for a parenting order must be made after the date upon which the exclusion review and appeal process ends.

In the case of permanent or fixed term exclusions the date on which the appeal process is complete would be the same as for the Parenting Contract provisions on page 5 of this document.

In cases of permanent exclusion, any application for a parenting order must be made within 40 school days of the date on which the appeal process ended unless a parenting contract has first been entered into. In which case the application must be made within 6 months of the date of the contract.

In cases of fixed-term exclusion, any application for a parenting order must be made within 40 school days of the date on which the review process for the second fixed-term exclusion ends unless a parenting contract has first been entered into. In which case the application must be made within 6 months of this date.

In the case of serious behaviour warranting exclusion, application for a parenting order must be made within 40 school days after the relevant behaviour occurred, unless a parenting contract has first been entered into; in which case the application must be made within 6 months of this date.

In the case of fixed term exclusions, where the child remains a registered pupil at the school, the head teacher, with the backing of the governing body, may wish to make a case to the Authority as to why a parenting order might be appropriate and helpful. In such an instance, the Authority may agree to apply for a parenting order on behalf of the school.

Making any application for a parenting order in cases of exclusion from school will require collaborative working between the school and the Authority.

Costs

The Authority is under no obligation to apply for a parenting order in cases of exclusion from school.

Where an application for a parenting order is made, the Authority will always cover the costs of making the application.

The Authority will usually meet the costs of the counselling or guidance programme provided through a parenting order.

The school will be expected to meet the costs of the counselling or guidance programme where:

- An application is made by the Authority at the request of a school or
- The order names, with the agreement of the governing body, a head teacher or person nominated by the head teacher as the responsible officer.

Appendix 1

Making the Application

Evidence that the pupil has been excluded and that the exclusion was made in response to serious misbehaviour at school.

Evidence of serious misbehaviour which would warrant exclusion.

Evidence that the pupil has been excluded from school should take the form of:

- A statement by the head teacher of the school
- The minutes of the Discipline Committee (in the case of exclusions lasting longer than 5 school days) and
- In the case of permanent exclusions where the parent lodges an appeal, the minutes or decision letter of the independent appeal panel hearing.

Supporting evidence might include witness statements from witnesses who saw the incident or physical evidence where appropriate.

Evidence that making the order would be desirable in the interests of preventing any further poor behaviour in school, which may lead to exclusion

The Authority will provide a report template for schools to use in preparing their evidence.

The court has discretion to consider all the circumstances of the case in deciding whether it is desirable to make a parenting order including the evidence of parents and other witnesses in court. The assessments of the child or young person and their parents or guardians by the Authority and details of the Authority's ability to deliver the parenting programme should be presented to support the application.

The Authority should also provide evidence of any experience of trying to engage the parents through a parenting contract. Magistrates are obliged to take into account any parental refusal to enter into, or failure to comply with, a parenting contract. They must also take into account any failure by the parent without reasonable excuse to attend at reintegration interview following fixed term exclusion. This evidence is relevant to the consideration of whether the order is desirable in the interests of preventing further poor behaviour in school, which may trigger exclusion. If parents will fully engage with support offered on a voluntary basis, a parenting order would not usually be desirable.

Procedural Points

Providing information about family circumstances

Before making a parenting order where the child or young person is under the age of 16, the court must obtain and consider information about the parent or guardian's family circumstances and the likely effect of the order on those circumstances.

The Authority should be prepared to provide information about the parent or guardian's family circumstances. The Authority could submit a report along with the application for the parenting order. Alternatively, the court could rely on an oral report in court (e.g. where the family circumstances are known to the Authority), or ask questions of the parent or guardian or of the child or young person if they are present in court. The format in which this information should be presented will be for the court to determine and will depend on the circumstances of the case.

Children In The Care Of The Local Authority Or Living In Local Authority Accommodation

Parenting orders in cases of exclusion from school apply only to parents as individuals and not to corporate bodies. Therefore, this type of parenting order does not apply to children in the care of the local Authority or living in local Authority accommodation.

Parental Attendance At Court

Magistrates' courts, including youth courts, have powers to enforce parental attendance at court, where appropriate, by issuing a summons. It is desirable to ensure both parents attend court and that both parents are involved in any parenting intervention.

Requirements Of Parenting Orders

The requirements specified in the parenting order or in directions given under the order should, as far as practicable, avoid any conflict with the parent's religious beliefs and any interference with the times at which the parent normally works or attends an educational establishment. A balance will need to be struck between imposing requirements that address the problems, which led to the imposition of the parenting order and these other issues.

Counselling Or Guidance Programme

The core requirement of a parenting order is that the parent attends a counselling or guidance programme as specified in directions given by the responsible officer and must be imposed in all cases when an order is made (except where the parent or guardian has previously received a parenting order). This can last for up to three months. The arrangements for meeting this requirement should be as flexible as possible, not least to take account of the availability and timing of such a programme.

The counselling or guidance programme may be provided by the responsible officer or by another provider, such as the Youth Offending Service or a local voluntary sector organisation working with parents. The local Authority should have clear arrangements in place for delivering parenting orders.

The court will decide the length of this requirement. It should be such as to allow for a sufficient number of weekly sessions. Experience suggests that this should be no less than 6 or 7 two-hour sessions. The period of up to three months for this requirement must run concurrently with the overall length of the order and any specific requirements but taking account of the availability of an appropriate

counselling and guidance programme, does not have to run from the date the order is made.

If the only requirement to be included in the order is to attend a counselling or guidance programme then the court could still make the order last for twelve months. The court may consider it reasonable to do so in order to allow for the possibility of the order being breached and the order being varied to require the parent to attend a new counselling or guidance programme. The responsible officer will need, in consultation with the provider of any parenting course or group where appropriate, to make an assessment about the nature of the counselling or guidance programme in which the parent(s) should take part. This should cover such questions as:

- Who will administer the sessions
- Whether they should be group or individually based and
- Whether there are particular cultural and social factors to be considered.

During the course of the parent's attendance at the counselling or guidance programme, the parent, the responsible officer and the programme provider (if different) will need to consider the progress, which is being made. The frequency of this will depend on the extent to which the responsible officer is directly involved in the delivery of the programme. The parent might also find it helpful to be involved in some voluntary follow-up work when the order has been completed; this might involve attending a parent support group or similar activity.

Residential requirement

A parenting order can include a residential course but only if two conditions are met:

- a) That the attendance of the parent or guardian at a residential course is likely to be more effective than their attendance at a non-residential course in preventing their child from engaging in a repetition of the behaviour which led to the making of the order; and
- b) That any likely interference with family life is proportionate in all the circumstances.

The intention of these conditions is to ensure that any residential component to a parenting order would be proportionate under Article 8 of the European Convention on Human Rights – right to respect for private and family life.

Authorities should therefore consider whether there would be a breach of Article 8 and if so whether that is justifiable.

If an Authority wishes to recommend or apply for a parenting order with a residential component they should provide evidence that these conditions are met. Evidence that a residential course will be more effective may be that the parent's home life is so chaotic that they need a structured setting where sustained counselling and guidance can be undertaken.

In order for the court to decide whether any likely interference with family life is proportionate it will be necessary for Authorities to inform the court what the programme will be. A small number of residential weekends structured within a

wider non-residential programme may be a suitable approach. Arrangements for the care of the child (and any siblings and dependants) will be a crucial consideration. It may be that the child and siblings attending voluntarily will be desirable as intensive family work can be particularly effective.

Specific requirements

The court may also include in a parenting order a requirement for the parent to comply for a period of not more than 12 months with such requirements as are specified in the order.

The Authority should make a recommendation to the court as to how long the parenting order should be imposed for. This would depend on the circumstances of the case. In many cases it will be desirable to recommend to the court that the parenting order should last for the full 12-month period. The imposition of a parenting order for this time period is more likely to bring about a sustained improvement as a consequence of the ongoing support and monitoring delivered through the order.

The requirements specified in the order may be such as the court considers desirable in the interests of preventing any repetition of the behaviour which led to the pupil being excluded from school in the first place. Although discretionary, it is likely to be appropriate to include requirements relating to the supervision of the child in order to address his behaviour. The Authority should recommend to the court what these requirements should consist of. The requirements imposed under this element of the order will need to be tailored to address the problems which caused the court to make the parenting order and should, if possible, be linked to any work being undertaken by the Authority or school with the child.

When deciding on specific requirements it is important to consider that breach of the order is a criminal offence. It is therefore vital to ensure that the requirements are clear enough for a parent or guardian to know when they are breaching them and for the responsible officer to be able to monitor the parent's compliance.

Appendix 2

Role of the responsible officer

The responsible officer will provide or arrange for the provision of the counselling or guidance programme, and will supervise any other requirements included in the order.

The responsible officer will also need to identify and liaise with other agencies involved with the pupil or family (i.e. social services, the youth offending team, any voluntary organisations) to ensure that all interventions fit together well and are complementary.

In deciding who is best placed to act as the responsible officer for a parenting order, the Authority should take into account the time commitment required on the part of the responsible officer.

Head teachers may only accept responsibility for acting as a responsible officer (either themselves or through a member of the school staff) where they have consulted and received the backing of the school's governing body.

It is good practice for the initial contact between the responsible officer and the parent to take place before the end of the next working day after the order is made. The initial meeting should be an opportunity for the responsible officer to explain further to the parent the nature of the parenting order (and provide him or her with a copy of the order), its purpose and how it will work in practice. The practical details of the requirements will need to be set out, the monitoring arrangements described and the consequences of failure to comply with any requirements explained. If the counselling or guidance programme under the order are to be provided by someone other than the responsible officer, a pre-meeting between the parent and that person should take place no more than two weeks before the sessions are due to start.

The success of the relationship between the parent or guardian and the responsible officer will be a key feature of the successful completion of the order. Whilst the requirements of the parenting order are in force, the responsible officer should maintain regular contact with the parent or guardian. This should enable the responsible officer to determine the extent to which the parent or guardian is complying with the requirements set by the court. If the requirements are proving difficult to comply with through no fault of the parent or guardian, the responsible officer may consider the need to apply to the court for the order to be varied. (See Appendix 3)

Appendix 3

Managing Parenting Orders and Further Court Involvement

Variation and Discharge

While a parenting order is in force the court, which made the order, may on the application of the responsible officer or the parent or guardian, vary or discharge it. Under Rule 114 of the Magistrates' Courts Rules 1981 (inserted by Rule 4(4) of the Magistrates' Courts (Miscellaneous Amendments) Rules 1998), application is by complaint. These are civil procedures and are governed by sections 51–57 of the Magistrates' Courts Act 1980 and Rules 4 and 98 of the 1981 Rules. These sections and Rules deal with, amongst other things, the issuing of summonses and the non-appearance of the parties.

The order can be varied either by inserting in the order (in addition to or in substitution for any of its provisions) any provision that could have been included in the order if the court had then had the power to make the order and were exercising that power, or by cancelling any provision included in the order. Parenting orders may be varied for a number of reasons. For example, where the family moves to another area or where the requirements are not proving effective.

Where an application for the discharge of a parenting order has been dismissed, no further application may be made without the court's consent. This is largely to prevent spurious or repeat applications.

Dealing with Appeals and Breach of an Order

Appeals

Where a parenting order in a case of exclusion from school has been made, any appeal against the order should be made to the Crown Court.

Breach

The parenting order is primarily designed to help and support parents or guardians in addressing their child's behaviour. The responsible officer should be seeking to secure and maintain the parent's co-operation and compliance with the requirements of the order to ensure that it is successfully completed, and will need to make a judgement about what is reasonable in all the circumstances of the case.

If a parent fails to comply with a requirement of the order, it is good practise for the responsible officer to make contact with the parent within one working day by visit, telephone or letter. If there is no acceptable reason for the non-compliance, the responsible officer should give the parent a written warning and if possible a warning in person.

If the parent has good reason for the failure to comply with the requirements of the parenting order, it may be appropriate for the responsible officer to consider whether to apply to the court for the terms of the order to be varied.

In the event of more than one unacceptable failure to comply within a period of three months, the responsible officer should meet the parent to review the order and how it can be made to work. In the light of this discussion the responsible officer should consider whether the failure to comply should form the basis of a prosecution.

If a prosecution is brought, there will be a hearing to determine whether the parent is guilty of failing without reasonable excuse to comply with a requirement of a parenting order. In all cases this will be heard in the adult magistrates' court, except when the parent or guardian is under 18 where it would be more appropriate for the case to be heard in a youth court. The hearing will provide an opportunity for the parent to explain why a failure to comply with a requirement of the order has occurred.

If the parent is convicted, he or she will be liable to a fine not exceeding level 3 on the standard scale (currently up to £1,000). The court will also have available to it an absolute or conditional discharge, probation order or curfew order; the imposition of a community sentence would be subject to the restrictions set out in sections 6 and 7 of the Criminal Justice Act 1991. Courts cannot re-issue parenting orders in breach proceedings.

Under section 127 of the Magistrates' Court Act 1980 there is a six-month time limit for bringing breach proceedings. Proceedings can be brought after an order has expired. They will however be most effective when brought as soon as possible after the breach is discovered and completed within the life of the order. This will allow the Court more options, for instance to vary the order to require the parent to attend a new parenting programme and fulfil specific requirements to exercise control over the child. The penalty for breach could be a fine or community sentence dependent on the parent attending a new programme and meeting other requirements.